

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE BRIAN DAVISON,

Petitioner,

v.

UNKNOWN,¹

Respondent.

Case No. 1:21-cv-01388-HBK

FINDINGS AND RECOMMENDATIONS TO
DISMISS PETITION FOR FAILURE TO
EXHAUST CLAIM²

FOURTEEN-DAY OBJECTION PERIOD

(Doc. No. 1)

ORDER DIRECTING CLERK OF COURT TO
ASSIGN DISTRICT JUDGE

Petitioner Ronnie Brian Davison, a state prisoner proceeding *pro se*, has pending a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). This matter is before the Court for preliminary review. *See* Rules Governing § 2254 Cases, Rule 4; 28 U.S.C. § 2243. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). Courts have “an active role in

¹ “The federal habeas statute provides that the proper respondent to a habeas petition is ‘the person who has custody over [the petitioner].’” *Rumsfeld v. Padilla*, 542 U.S. 426 (2005) (citing 28 U.S.C. § 2242). If Petitioner files objections to these findings and recommendations, he should provide the name of his warden as the respondent in his objections.

² This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2019).

1 summarily disposing of facially defective habeas petitions” under Rule 4. *Ross v. Williams*, 896
 2 F.3d 958, 968 (9th Cir. 2018) (citation omitted). As more fully set forth herein, based on the facts
 3 and governing law, the undersigned recommends that the Petition be dismissed because the sole
 4 ground for relief raised in the Petition is unexhausted.

5 **I. BACKGROUND**

6 Petitioner initiated this case on September 16, 2021 by filing the instant petition. (Doc.
 7 No. 1). Petitioner is confined in “C.T. F.” serving an eight-month prison sentence entered by the
 8 Fresno County Superior Court on March 25, 2021 for his *nolo contendere* plea-based conviction
 9 for attempted second-degree burglary.³ (*Id.* at 2). The petition raises one ground for relief. (*Id.*
 10 at 3). Specifically, Petitioner claims that the Fresno County court clerk failed to properly give
 11 him credit for time served as ordered by the trial court judge and thus his sentence is incorrectly
 12 calculated. (*Id.*). Attached to the petition is a copy of Petitioner’s sentencing proceedings during
 13 which the superior court set forth Petitioner’s various time-served credits. (*Id.* at 10-11).

14 **II. APPLICABLE LAW AND ANALYSIS**

15 A petitioner in state custody who wishes to proceed on a federal petition for a writ of
 16 habeas corpus must exhaust state judicial remedies. *See* 28 U.S.C. § 2254(b)(1). Exhaustion is a
 17 “threshold” matter that must be satisfied before the court can consider the merits of each claim.
 18 *Day v. McDonough*, 547 U.S. 198, 205 (2006). The exhaustion doctrine is based on comity and
 19 permits the state court the initial opportunity to resolve any alleged constitutional deprivations.
 20 *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982).
 21 To satisfy the exhaustion requirement, petitioner must provide the highest state court with a full
 22 and fair opportunity to consider each claim before presenting it to the federal court. *See*
 23 *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v. Henry*, 513 U.S. 364, 365 (1995).
 24 The burden of proving exhaustion rests with the petitioner. *Darr v. Burford*, 339 U.S. 200, 218
 25 (1950) (overruled in part on other grounds by *Fay v. Noia*, 372 U.S. 391 (1963)). A failure to
 26 exhaust may only be excused where the petitioner shows that “there is an absence of available

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 28 ³ Petitioner’s total sentence is longer than eight months due to additional convictions which are not the
 subject of this petition.

1 State corrective process” or “circumstances exist that render such process ineffective to protect
2 the rights of the applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii).

3 Here, Petitioner does not show that “there is an absence of available State corrective
4 process” or “circumstances exist that render such process ineffective to protect the rights of the
5 applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii). Nor does Petitioner state that he either directly
6 appealed or sought habeas review before state appellate or supreme court. (*See* Doc. No. 1 at 5-
7 6). The Court takes judicial notice of the California Courts Appellate Courts Case Information
8 online database pursuant to Rule 201 of the Federal Rules of Evidence, which lists no appellate or
9 supreme court cases for petitioner.⁴ Petitioner states that his research indicates that this Court is
10 the proper court “to correct this mistake in my time credits.” (*Id.* at 6). Petitioner is mistaken
11 because he can, and must, first seek to correct any errors before both the state appellate and
12 supreme court before seeking habeas review in this Court. *See* 28 U.S.C. § 2254(b)(1). If
13 Petitioner has in fact exhausted his claims before the state courts, he should provide proof of this
14 exhaustion in his objections to these findings and recommendations. Accordingly, the Court
15 recommends that the petition be dismissed without prejudice to Petitioner refiling once he has
16 exhausted his claims in the state courts.

17 IV. CERTIFICATE OF APPEALABILITY

18 State prisoners in a habeas corpus action under § 2254 do not have an automatic right to
19 appeal a final order. *See* 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36
20 (2003). To appeal, a prisoner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(2);
21 *see also* R. Governing Section 2254 Cases 11 (requires a district court to issue or deny a
22 certificate of appealability when entering a final order adverse to a petitioner); Ninth Circuit Rule
23 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). Where, as here, the court
24 denies habeas relief on procedural grounds without reaching the merits of the underlying
25 constitutional claims, the court should issue a certificate of appealability only “if jurists of reason
26 would find it debatable whether the petition states a valid claim of the denial of a constitutional

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28 ⁴ <https://appellatecases.courtinfo.ca.gov/search.cfm?dist=0> (search “Search by Party” for “Ronnie Davison”).

1 right and that jurists of reason would find it debatable whether the district court was correct in its
2 procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar
3 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist
4 could not conclude either that the district court erred in dismissing the petition or that the
5 petitioner should be allowed to proceed further.” *Id.* Here, reasonable jurists would not find the
6 undersigned’s conclusion debatable or conclude that petitioner should proceed further. The
7 undersigned therefore recommends that a certificate of appealability not issue.

8 Accordingly, it is RECOMMENDED:

- 9 1. The petition (Doc. No. 1) be DISMISSED without prejudice.
10 2. Petitioner be denied a certificate of appealability.

11 Further, it is ORDERED:

12 This case be assigned to a district judge for the purposes of reviewing these findings and
13 recommendations.

14 **NOTICE TO PARTIES**

15 These findings and recommendations will be submitted to the United States district judge
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
17 (14) days after being served with these findings and recommendations, a party may file written
18 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
19 Findings and Recommendations.” Parties are advised that failure to file objections within the
20 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
21 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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23 Dated: September 20, 2021

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HELENA M. BARCH-KUCHTA
25 UNITED STATES MAGISTRATE JUDGE
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